



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 28/02/11

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 20/04/11

Appeal Decision

Site visit made on 28/02/11

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 20/04/11

Appeal Ref: APP/H6955/A/10/2143351

Site address: Plot 2, Parsonage Farm, Bottom Road, Summerhill, Wrexham LL11 4TR

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Thomas Bellis against the decision of Wrexham County Borough Council.
- The application Ref GWE P/2010/0561, dated 17 June 2010, was refused by notice dated 30 November 2010.
- The application sought planning permission for amendment to previously approved remodelled outbuilding (code no. P/2005/1153) to form ancillary residential buildings to plot no. 2 without complying with a condition attached to planning permission Ref P/2007/0737, dated 12 June 2007.
- The condition in dispute is No 5 which states that: "This permission shall operate only to allow development to be carried out in accordance with the approved drawings and the application documentation. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, no further development shall take place within the site (other than the painting of the buildings)".
- The reason given for the condition is: "To ensure the development does not compromise the Council policies with regard to residential Development in the Countryside".

Decision

1. I allow this appeal and grant planning permission for amendment to previously approved remodelled outbuilding (code no. P/2005/1153) to form ancillary residential buildings to plot no. 2 without complying with a condition to allow retention of changes made to remodelled outbuilding as previously approved and the retention of a hard standing at plot 2, Parsonage Farm, Bottom Road, Summerhill, Wrexham LL11 4TR in accordance with application Ref GWE P/2010/0561 made on the 17 June 2010 without compliance with condition number 5 previously imposed on planning permission Ref P/2007/0737 dated 12 June 2007 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Preliminary Matters

2. Planning permission was initially granted in 2005 for the demolition of a pair of semi-detached houses and the erection of two linked-detached replacement dwellings including the conversion of outbuildings as ancillary accommodation for plot 2. In 2007 planning permission was granted for an amendment to the approved scheme for

the outbuilding subject to conditions. Work was carried at variance to the 2007 planning permission. The Council served a breach of condition notice in March 2010 relating to the installation of windows in lieu of garage doors, the installation of four roof lights, the construction of a hard standing and the installation of other doors and windows in the building.

3. A planning application was submitted in June 2010 to regularise these works, and I have dealt with this appeal as development already carried out without compliance with the disputed condition under S73A.
4. The Appellant's appeal form states that the description of the development has changed to "proposed variation of condition 5 of planning permission code P/2007/0737 to allow retention of changes made to remodelled outbuilding as previously approved and the retention of a hardstanding".
5. Section 73A would grant a new planning permission without the disputed condition with the existing permission remaining extant. A new planning permission would not alter or vary the extant planning permission. For this reason, the description of the development should refer to the previous permission and what is now sought as *"amendment to previously approved remodelled outbuilding (code no. P/2005/1153) to form ancillary residential buildings to plot no. 2 without complying with a condition to allow retention of changes made to remodelled outbuilding as previously approved and the retention of a hard standing"*. I find no injustice would arise in dealing with this appeal in this way, as the sum of the works is no more or less than what is sought.

Main Issue

6. The Council is concerned that the alterations to the building have prevented its use for parking and garaging of vehicles, and that this would give rise to further garages being erected on the site.
7. The main issue is the effect of retaining the changes made to the outbuilding would have on highway safety in relation to parking provision.

Reasons

8. The appeal site is located in the countryside to the north of Summerhill, near the junction of Bottom Road and Glyon Lane. The building is a brick outbuilding with a tiled roof and modern domestic windows and doors have been installed in the main south-east and north-west elevations. There is a separate access and drive on the northern side of the site inset from the stone wall which bounds the highway. This is shown as a separate access to the field to the west. The submitted landscaping details show a turning head near to the drive but no direct link to it, and a concrete hard standing which is in situ on the western end of the building. Condition 6 requires the access to be closed in accordance with a scheme to be agreed with the Council. A paired access serves both dwellings and the driveway swings around the eastern end of the building to the turning head and hard standing on the other side. The outbuilding has been linked to the main house with a glazed annex.
9. Planning condition no. 7 restricts the use of the outbuildings for purposes incidental to the use of the property as a single dwelling house. The condition indicates that it does not preclude the parking of two motor vehicles. There is no requirement to park vehicles within the outbuilding, as this would be unenforceable and unreasonable, therefore provided there is sufficient space to park within the grounds of the house

then that provision is met. From what I saw there is ample space to do so, and for vehicles to turn around. Condition 5 or for that matter condition 7, cannot require the building to be used in a particular way other than to be used incidental to the enjoyment of the main dwelling. There is no evidence from the Council to indicate that the building is used in breach of this restriction.

10. The effect of retaining the changes made to the outbuilding would not harm highway safety in relation to parking provision, and there is no compelling case made that the changes adversely affect the character and appearance of the building other than to say that it is likely to increase pressure for another garage.
11. The Council can gauge the acceptability or otherwise of future buildings on the site by applying relevant planning policies of the Wrexham Unitary Development Plan (UDP), and condition 5 cannot preclude further development on the site, it merely obliges an application to be made. I therefore conclude that the effect of retaining the changes made to the outbuilding would not conflict with UDP policies PS2, GDP1 (a) or Local Planning Guidance Note 3.
12. The Council has not demonstrated the exceptional circumstances which warrant restrictions on permitted development rights in this case as set out in paragraph 87 of Circular 35/95. The disputed condition imposes an overall restriction on permitted development rights and is not specific, offending the advice in paragraph 89 of Circular 35/95. I therefore consider it necessary to grant a new planning permission without the disputed condition, but subject to the other conditions imposed on the planning permission, so far as the same are still subsisting and capable of taking effect. No new conditions are needed as suggested by the Council and the Appellant, because of the reference back to the 2007 planning permission and the plans submitted with this appeal.
13. I note the representations that without the disputed condition this would set a precedent, but as indicated, although provision for parking can be made available within existing buildings, it does not follow that a planning condition can require vehicles to be parked within them. In this case, there is adequate external provision and I also note that the 2005 permission related to replacement dwellings not the conversion of outbuildings to dwellings. There is no compelling case to indicate that this development would create a precedent, as the circumstances of this case would rarely be the same elsewhere. The appeal therefore succeeds.

Iwan Lloyd

INSPECTOR